

Murphy, Lauren

From: Keim, Marsha
Sent: Tuesday, August 30, 2011 9:30 AM
To: Joe Matthews
Cc: Brown, Ron; Valenta, Mary; Murphy, Lauren; Lohr, Michelle; Dozier, Nicole
Subject: FW: Scanned from a Xerox multifunction device
Attachments: Scanned from a Xerox multifunction device001.pdf

Categories: HDRC or Preservation

Mr. Matthews,

Attached you will find a copy of the memo Zoning Permits received from the County Attorney regarding your three zoning permit applications. The County Attorney has found that the fishing gazebo and the detached bridge each qualify as being a "building, facility or other structure" allowed pursuant to paragraph 8 (b) of the Deed of Gift of Easement. The kitchenette was not found to meet the criteria. Thus, we cannot process your zoning application for the kitchenette. Once HDRC has reviewed and made their determinations regarding the fishing gazebo and the detached bridge, the zoning permit review will proceed on those structures.

It is my understanding that your application to the HDRC included the fishing gazebo, detached bridge, kitchenette, and two additional structures. We do not have zoning applications for the two additional structures. Please note that these additional structures will need a zoning permit application and County Attorney review before they can complete the process.

If you have any questions feel free to contact me.

Marsha Keim
Zoning Permit Manager

MEMORANDUM
OFFICE OF THE COUNTY ATTORNEY
LOUDOUN COUNTY, VIRGINIA

TO: Marsha Keim, Zoning Permit Manager

CC: Lauren Murphy, Project Planner, Department of Planning

FROM: Mary Confroy Valenta, Assistant County Attorney 

THROUGH: Ronald J. Brown, Deputy County Attorney 

SUBJECT: Matthews Property (Trillium Farm) – Open Space Easement Inquiry
PIN # 457-46-4769

DATE: August 25, 2011

You have inquired whether the terms of the applicable Open Space Easement encumbering the subject property would permit the construction of a bridge (over a pond) 535 square feet in size, a fishing gazebo at the pond 348 square feet* in size, and a kitchenette building near the pond 605 square feet in size.

The Board of Supervisors has a statutorily mandated duty, with respect to such Open Space Easements granted to the Board, to carry out the purposes of the Open Space Land Act. The terms of the Open Space Easement, which are intended and designed to comply with the Act, provide that the purposes of the Easement include maintaining the character of land as open space land. The Open Space Land Act of 1966 (in effect of the time of the grant of the subject easement) defined open space land to be preserved, inter alia, for the conservation of land or other natural resources or for historic or scenic purposes or for the shaping of the character, direction and timing of community development. Consequently, the Board must try to resolve requests to "encroach" into the Easement in a manner that achieves these purposes to the greatest reasonable extent possible, and this requires the Board to look carefully at the meaning and intent of the language in each open space easement deed and the details of the proposed use.

The subject parcel contains approximately 50.07 acres, is designated in the County Tax Records as PIN# 457-46-4769, and is located at 18915 Lincoln Road, Purcellville, Virginia. The Deed of Gift of Easement, recorded in 1987 in Deed Book 954 at page 1790 ("Deed"), was apparently made as a gift from the then-property owner (Albert S. Puelicher, Jr.) to the County. The property is currently zoned AR-1 and is located in the New Hughesville Agricultural District and the Goose Creek Historic Cultural

**The permit states that the structure will be 248 square feet in size. However, zoning calculations by the permits staff indicate that the structure will be 348 square feet in size.*

Conservation District.

Paragraph 8 of the Deed states:

No building, facility or other structure shall be erected or constructed on the Property unless:

- a) Such structure is a new structure which is designed, constructed and utilized in connection with the continued agricultural, horticultural, silvicultural and naturalistic uses of the Property; or
- b) Such structure is a new structure which is designed, constructed and utilized for the principal purpose of serving the existing residence. The type of such structure which may be erected includes but is not limited to a garage or well house; or
- c) Such structure is in the form of a structural modification to one of the existing structures on the Property, as provided in Paragraph 10.c; or
- d) Such structure is a new residential dwelling or structure designed, constructed and utilized for the principal purpose of serving as a residence subject to the provisions and terms of Paragraph 9 below.

Based upon a sketch provided by the property owner as part of the permit applications, it appears that the proposed fishing gazebo and bridge would be adjacent to an existing pond on the property, and the kitchenette would be located near the pond, over 550 feet (one-tenth of a mile) from the residence.

In applying the criteria of paragraph 8 of the Deed, it is our opinion that the proposed kitchenette would not be allowed. The proposed kitchenette does not appear to be designed, constructed and utilized in connection with any continued agricultural, horticultural, silvicultural or naturalistic use of the property. Further, the proposed kitchenette would not be considered as being "for the principal purposes of serving the existing residence," particularly when the examples given in the Deed are garage or well house. Paragraphs 8(c) and (d) clearly would not apply (as the proposed structure is a new structure) and is not being designed, constructed and utilized for the principal purpose of "serving as a residence."

With regards to the kitchenette specifically, we note that, not only is it proposed to be located more than 550 feet from the principal residence, the architectural plans provided in support of the permit applications indicate that the "kitchenette" will include

Marsha Keim, Zoning Permit Manager
August 25, 2011
Page 3 of 3

separate men's and women's bathrooms and dimensions of such restrooms "to meet ADA standards". Such a structure does not fit within the usual and customary meaning of what is understood and intended by the phrase "for the principal purpose of serving the existing residence . . . [such as] garage or well house" (or meet any of the other criteria set forth in paragraph 8 of the Deed). This is particularly true when one considers that a stated purpose of the grantor of the open space easement was his desire to preserve the property "as open space land in the public interest."

Based on the size, location, description, purpose and scale of the proposed structures in relation to the existing principal residence and their location on the parcel in relation to the principal residence, it is our opinion that the detached bridge and fishing gazebo qualify as being a "building, facility or other structure" allowed pursuant to paragraph 8(b) of the Deed of Gift of Easement. However, it is our opinion that the kitchenette does not qualify under any provision of paragraph 8 or any other term of the Deed and is, therefore, not permitted under the terms of the Deed of Gift of Easement.